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Attorneys for Third Party Defendant,  
 ADVANCE PUBLICATIONS, INC.

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

ADVANCE MAGAZINE PUBLISHERS INC.  
 d/b/a THE CONDÉ NAST PUBLICATIONS,

Plaintiff,

v.

ACTIV8NOW, LLC and ACTIVE8MEDIA, LLC,

Defendants,

v.

ADVANCE PUBLICATIONS, INC. and RICHFX,  
 INC.,

Third Party Defendants.

CIVIL ACTION NO.:

05-CV-7516 (KMK) (DFE)

**AMENDED THIRD PARTY  
 ANSWER, AFFIRMATIVE  
 DEFENSES AND COUNTERCLAIM  
 OF THIRD PARTY DEFENDANT  
 ADVANCE PUBLICATIONS, INC.  
 TO DEFENDANTS' AMENDED  
 COUNTERCLAIMS**

As and for its Amended Answer, Affirmative Defenses and Counterclaim to Defendants'  
 Amended Counterclaims as electronically filed with the Court on June 27, 2006, Third Party  
 Defendant Advance Publications, Inc. ("Advance") alleges as follows:

**AMENDED ANSWER**

1. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Counterclaims, and therefore denies them.

2. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Amended Counterclaims, and therefore denies them.

3. Advance admits the allegations of paragraph 3 of the Amended Counterclaims.

4. Advance admits the allegations of paragraph 4 of the Amended Counterclaims.

5. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the Amended Counterclaims concerning RichFX, Inc., and therefore denies them.

6. Answering the allegations of paragraph 6 of the Amended Counterclaims, Advance admits that Defendants have filed Amended Counterclaims asserting subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1338 and 1367, 15 U.S.C. §1121, 35 U.S.C. §271 *et seq.*, Lanham Act, 35 U.S.C. §1125(a), and under the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202, but otherwise, Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

7. Answering the allegations of paragraph 7 of the Amended Counterclaims, Advance admits that Defendants assert that venue is proper in this Court for purposes of Defendants' Amended Counterclaims pursuant to 28 U.S.C. §§1391(b) and (c), but otherwise, Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

8. Advance admits the allegations of paragraph 8 of the Amended Counterclaims.

9. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Counterclaims, and therefore denies them.

10. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Amended Counterclaims, and therefore denies them, except admits that U.S. Patent No. 6,535,889 issued on March 18, 2003.

11. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Amended Counterclaims, and therefore denies them, except admits that U.S. Patent No. 6,557,006 issued on April 29, 2003.

12. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Amended Counterclaims, and therefore denies them.

13. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Amended Counterclaims, and therefore denies them, except admits that Active8media filed a trademark application under Serial No. 78/685,794 in its own name with the United States Patent and Trademark Office for the word mark "See It! Activate It! Get It!"

14. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Amended Counterclaims, and therefore denies them, except admits that Active8media filed a trademark application under Serial No. 78/685,804 in its own name with the United States Patent and Trademark Office for the word mark "See It. Click It. Get It."

15. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Amended Counterclaims, and therefore denies

them, except admits that Active8media filed a trademark application under Serial No. 78/664,682 in its own name with the United States Patent and Trademark Office for the word mark "Love Learn Locate."

16. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Amended Counterclaims, and therefore denies them.

17. Answering the allegations of paragraph 17 of the Amended Counterclaims, Advance states that the Vogue Agreement speaks for itself, and otherwise Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Amended Counterclaims, and therefore denies them.

18. Answering the allegations of paragraph 18 of the Amended Counterclaims, Advance states that the Vogue Agreement speaks for itself, and otherwise Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Amended Counterclaims, and therefore denies them.

19. Answering the allegations of paragraph 19 of the Amended Counterclaims, Advance states that the Vogue Agreement speaks for itself, and otherwise Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Amended Counterclaims, and therefore denies them.

20. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the Amended Counterclaims, and therefore denies them.

21. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Amended Counterclaims, and therefore denies them.

22. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the Amended Counterclaims, and therefore denies them.

23. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Amended Counterclaims, and therefore denies them.

24. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Amended Counterclaims, and therefore denies them.

25. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Amended Counterclaims, and therefore denies them.

26. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of the Amended Counterclaims, and therefore denies them.

27. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Amended Counterclaims, and therefore denies them.

28. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28 of the Amended Counterclaims, and therefore denies them.

29. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Amended Counterclaims, and therefore denies them.

30. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Amended Counterclaims, and therefore denies them.

31. Advance denies the allegations of paragraph 31 of the Amended Counterclaims.

32. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Amended Counterclaims, and therefore denies them.

33. Advance denies the allegations of paragraph 33 of the Amended Counterclaims.

34. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Amended Counterclaims, and therefore denies them.

35. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Amended Counterclaims, and therefore denies them.

36. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Amended Counterclaims, and therefore denies them.

37. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Amended Counterclaims, and therefore denies them.

38. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Amended Counterclaims, and therefore denies them.

39. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the Amended Counterclaims, and therefore denies them.

40. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of the Amended Counterclaims, and therefore denies them.

41. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Amended Counterclaims, and therefore denies them.

42. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Amended Counterclaims, and therefore denies them.

43. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Amended Counterclaims, and therefore denies them.

44. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 of the Amended Counterclaims, and therefore denies them.

45. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Amended Counterclaims, and therefore denies them.

46. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Amended Counterclaims, and therefore denies them.

47. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Amended Counterclaims, and therefore denies them.

48. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 of the Amended Counterclaims, and therefore denies them.

49. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49 of the Amended Counterclaims, and therefore denies them.

50. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50 of the Amended Counterclaims, and therefore denies them.



51. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 of the Amended Counterclaims, and therefore denies them.

52. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Amended Counterclaims, and therefore denies them.

53. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53 of the Amended Counterclaims, and therefore denies them.

54. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Amended Counterclaims, and therefore denies them.

55. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Amended Counterclaims, and therefore denies them.

56. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Amended Counterclaims, and therefore denies them.

57. Answering the allegations of paragraph 57 of the Amended Counterclaims, Advance states that the House & Garden Agreement speaks for itself, and otherwise Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

58. Answering the allegations of paragraph 58 of the Amended Counterclaims, Advance states that the House & Garden and Vogue Agreements speak for themselves, and otherwise Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

59. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59 of the Amended Counterclaims, and therefore denies them.

60. Answering the allegations of paragraph 60 of the Amended Counterclaims, Advance states that the House & Garden Agreement speaks for itself, and otherwise Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore denies them.

61. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61 of the Amended Counterclaims, and therefore denies them.

62. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62 of the Amended Counterclaims, and therefore denies them.

### **Count I**

63. With respect to paragraph 63 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 62 of the Amended Counterclaims as though fully set forth herein.

64. Advance denies the allegations of paragraph 64 of the Amended Counterclaims.

65. Advance denies the allegations of paragraph 65 of the Amended Counterclaims.

66. Advance denies the allegations of paragraph 66 of the Amended Counterclaims.

67. Advance denies the allegations of paragraph 67 of the Amended Counterclaims.

### **Count II**

68. With respect to paragraph 68 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 67 of the Amended Counterclaims as though fully set forth herein.

69. Advance denies the allegations of paragraph 69 of the Amended Counterclaims.

70. Advance denies the allegations of paragraph 70 of the Amended Counterclaims.

71. Advance denies the allegations of paragraph 71 of the Amended Counterclaims.

72. Advance denies the allegations of paragraph 72 of the Amended Counterclaims.

### **Count III**

73. With respect to paragraph 73 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 72 of the Amended Counterclaims as though fully set forth herein.

74. Advance denies the allegations of paragraph 74 of the Amended Counterclaims.

75. Advance denies the allegations of paragraph 75 of the Amended Counterclaims.

76. Advance denies the allegations of paragraph 76 of the Amended Counterclaims.

77. Advance denies the allegations of paragraph 77 of the Amended Counterclaims.

### **Count IV**

78. With respect to paragraph 78 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 77 of the Amended Counterclaims as though fully set forth herein.

79. Advance denies the allegations of paragraph 79 of the Amended Counterclaims.

80. Advance denies the allegations of paragraph 80 of the Amended Counterclaims.

81. Advance denies the allegations of paragraph 81 of the Amended Counterclaims.

**Count V**

82. With respect to paragraph 82 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 81 of the Amended Counterclaims.

83. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 of the Amended Counterclaims, and therefore denies them.

84. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84 of the Amended Counterclaims, and therefore denies them.

85. Advance denies the allegations of paragraph 85 of the Amended Counterclaims.

86. Advance denies the allegations of paragraph 86 of the Amended Counterclaims.

87. Advance denies the allegations of paragraph 87 of the Amended Counterclaims.

88. Advance denies the allegations of paragraph 88 of the Amended Counterclaims.

89. Advance denies the allegations of paragraph 89 of the Amended Counterclaims.

90. Advance denies the allegations of paragraph 90 of the Amended Counterclaims.

91. Advance denies the allegations of paragraph 91 of the Amended Counterclaims.

**Count VI**

92. With respect to paragraph 92 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 91 of the Amended Counterclaims as though fully set forth herein.

93. Advance is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93 of the Amended Counterclaims, and therefore denies them.

94. Advance denies the allegations of paragraph 94 of the Amended Counterclaims.

95. Advance denies the allegations of paragraph 95 of the Amended Counterclaims.

96. Advance denies the allegations of paragraph 96 of the Amended Counterclaims.

#### **Count VII**

97. With respect to paragraph 97 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 96 of the Amended Counterclaims as though fully set forth herein.

98. Advance denies the allegations of paragraph 98 of the Amended Counterclaims.

99. Advance denies the allegations of paragraph 99 of the Amended Counterclaims.

#### **Count VIII**

100. With respect to paragraph 100 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 99 of the Amended Counterclaims as though fully set forth herein.

101. Advance denies the allegations of paragraph 101 of the Amended Counterclaims.

102. Advance denies the allegations of paragraph 102 of the Amended Counterclaims.

103. Advance denies the allegations of paragraph 103 of the Amended Counterclaims.

104. Advance denies the allegations of paragraph 104 of the Amended Counterclaims.

105. Advance denies the allegations of paragraph 105 of the Amended Counterclaims.

106. Advance denies the allegations of paragraph 106 of the Amended Counterclaims.

**Count IX**

107. With respect to paragraph 107 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 106 of the Amended Counterclaims as though fully set forth herein.

108. Advance denies the allegations of paragraph 108 of the Amended Counterclaims.

109. Advance denies the allegations of paragraph 109 of the Amended Counterclaims.

**Count X**

110. With respect to paragraph 110 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 109 of the Amended Counterclaims as though fully set forth herein.

111. Advance denies the allegations of paragraph 111 of the Amended Counterclaims.

112. Advance denies the allegations of paragraph 112 of the Amended Counterclaims.

113. Advance denies the allegations of paragraph 113 of the Amended Counterclaims.

**Count XI**

114. With respect to paragraph 114 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 113 of the Amended Counterclaims as though fully set forth herein.

115. Advance denies the allegations of paragraph 115 of the Amended Counterclaims.

116. Advance denies the allegations of paragraph 116 of the Amended Counterclaims.

**Count XII**

117. With respect to paragraph 117 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 116 of the Amended Counterclaims as though fully set forth herein.

118. Advance denies the allegations of paragraph 118 of the Amended Counterclaims.

119. Advance denies the allegations of paragraph 119 of the Amended Counterclaims.

**Count XIII**

120. With respect to paragraph 120 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 119 of the Amended Counterclaims as though fully set forth herein.

121. Advance denies the allegations of paragraph 121 of the Amended Counterclaims.

122. Advance denies the allegations of paragraph 122 of the Amended Counterclaims.

123. Advance denies the allegations of paragraph 123 of the Amended Counterclaims.

124. Advance denies the allegations of paragraph 124 of the Amended Counterclaims.

**Count XIV**

125. With respect to paragraph 125 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 124 of the Amended Counterclaims as though fully set forth herein.

126. Advance denies the allegations of paragraph 126 of the Amended Counterclaims.

127. Advance denies the allegations of paragraph 127 of the Amended Counterclaims.

**Count XV**

128. With respect to paragraph 128 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 127 of the Amended Counterclaims as though fully set forth herein.

129. Advance denies the allegations of paragraph 129 of the Amended Counterclaims.

130. Advance denies the allegations of paragraph 130 of the Amended Counterclaims.

**Count XVI**

131. With respect to paragraph 131 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 130 of the Amended Counterclaims as though fully set forth herein.

132. Advance denies the allegations of paragraph 132 of the Amended Counterclaims.

133. Advance denies the allegations of paragraph 133 of the Amended Counterclaims.

134. Advance denies the allegations of paragraph 134 of the Amended Counterclaims.

**Count XVII**

135. With respect to paragraph 135 of the Amended Counterclaims, Advance incorporates by reference its above responses to paragraphs 1 through 134 of the Amended Counterclaims as though fully set forth herein.

136. Advance denies the allegations of paragraph 136 of the Amended Counterclaims.

137. Advance denies the allegations of paragraph 137 of the Amended Counterclaims.

**GENERAL DENIAL**

138. Advance denies each and every allegation, prayer, matter, fact or thing averred in Defendants' Amended Counterclaims not expressly admitted or otherwise responded to herein.



## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

139. Defendants' Amended Counterclaims, in whole or in part, fail to state a claim upon which relief can be granted, and therefore should be dismissed.

### **Second Affirmative Defense**

140. Defendants' Amended Counterclaims based on state law and statutes, in whole or in part, are preempted by federal law and should be dismissed.

### **Third Affirmative Defense**

141. Defendants' Amended Counterclaims based on Georgia state law and statutes, in whole or in part, are inapposite under a New York conflicts of law analysis, and therefore should be dismissed.

### **Fourth Affirmative Defense**

142. U.S. Patent Nos. 6,535,889 and 6,557,006 (collectively, "Asserted Patents") are invalid and/or unenforceable under U.S. Patent Law and/or based on one or more of the requirements set forth in Title 35, United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and 112.

### **Fifth Affirmative Defense**

143. Advance had no involvement with respect to the subject matter of the causes of action asserted by Defendants in their Amended Counterclaims.

### **Sixth Affirmative Defense**

144. Advance has not directly or indirectly infringed the Asserted Patents, whether literally, under the Doctrine of Equivalents, contributorily, by inducement or otherwise.

**Seventh Affirmative Defense**

145. Condé Nast has subsisting license rights to the Asserted Patents and Defendants' technology.

**Eighth Affirmative Defense**

146. There is no basis in law or fact that a likelihood of confusion as to source or origin is presented concerning any offer by Condé Nast to advertisers made after engaging RichFX of the capability to convert catalog pages and magazine pages into interactive web pages, as alleged in Defendants' Amended Counterclaims.

**Ninth Affirmative Defense**

147. Activ8media's attempted fraudulent registration of the "Love, Learn, Locate" trademark with the U.S. Patent and Trademark Office and unclean hands act as bars to any relief sought by Defendants in Defendants' Amended Counterclaims.

**Tenth Affirmative Defense**

148. Condé Nast has subsisting exclusive rights to use the "See It. Click It. Get It." slogan.

**Eleventh Affirmative Defense**

149. There is no basis in law or fact for awarding Defendants increased, exemplary, punitive damages or attorney's fees or costs.

**ADVANCE'S AMENDED COUNTERCLAIM**

Third Party Defendant Advance asserts the following amended counterclaim for declaratory judgment against Defendants based on the patent causes of action asserted by Defendants in their Amended Counterclaims:

**First Advance Amended Counterclaim**

150. An actual and justiciable controversy exists between the parties as to the validity and infringement of the Asserted Patents based on Defendants' assertion of the Asserted Patents against Advance. Jurisdiction and venue are proper in this Court.

151. Upon information and belief the Asserted Patents are invalid and/or unenforceable under U.S. Patent Law and/or based on one or more of the requirements set forth in Title 35, United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and 112.

152. Advance has not, at any time, infringed the Asserted Patents in any manner.

153. Advance is entitled to a declaration under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, that the Asserted Patents are invalid and/or unenforceable and not infringed by Advance.

**WHEREFORE**, Advance prays for the following relief:

- A. a declaration that the Asserted Patents are invalid and/or unenforceable;
- B. a declaration that Advance has not infringed the Asserted Patents;
- C. an award of attorney fees, costs and disbursements incurred by Advance (i) in defending against Defendants' assertion of the Asserted Patents, (ii) in defending against Defendants' Amended Counterclaims and (iii) in protecting its rights in the present action; and
- D. an award of such other and further relief as may to the Court seem just and proper under the circumstances.

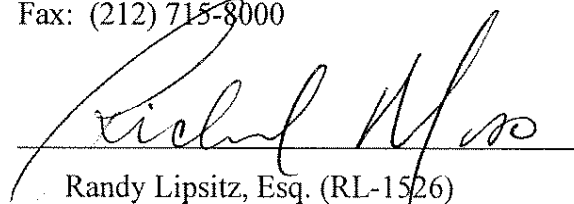
**DEMAND FOR JURY TRIAL**

Advance hereby demands trial by jury of its Amended Counterclaim in this action.

Dated: July 17, 2006  
New York, New York

Respectfully submitted,

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